

§ 228.102

where the carrier proposes to construct or reconstruct the exterior wall of the structure, or portion of such wall, which is closest to such operations.

(c) As used in this subpart—

(1) *Construction* shall refer to the—

(i) Creation of a new facility;

(ii) Expansion of an existing facility;

(iii) Placement of a mobile or modular facility; or

(iv) Acquisition and use of an existing building.

(2) *Reconstruction* shall refer to the—

(i) Replacement of an existing facility with a new facility on the same site; or

(ii) Rehabilitation or improvement of an existing facility (normal periodic maintenance excepted) involving the expenditure of an amount representing more than 50 percent of the cost of replacing such facility on the same site at the time the work of rehabilitation or improvement began, the replacement cost to be estimated on the basis of contemporary construction methods and materials.

(3) *Switching or humping operations* includes the classification of placarded railroad cars according to commodity or destination, assembling of placarded cars for train movements, changing the position of placarded cars for purposes of loading, unloading, or weighing, and the placing of placarded cars for repair. However, the term does not include the moving of rail equipment in connection with work service, the moving of a train or part of a train within yard limits by a road locomotive or placing locomotives or cars in a train or removing them from a train by a road locomotive while en route to the train's destination. The term does include operations within this definition which are conducted by any railroad; it is not limited to the operations of the carrier contemplating construction or reconstruction of railroad employee sleeping quarters.

(4) *Placarded car* shall mean a railroad car required to be placarded by the Department of Transportation hazardous materials regulations (49 CFR 172.504).

(5) The term L_{eq} (8) shall mean the equivalent steady state sound level which in 8 hours would contain the same acoustic energy as the time-vary-

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ing sound level during the same time period.

[43 FR 31012, July 19, 1978, as amended at 76 FR 67088, Oct. 31, 2011]

§ 228.102 Distance requirement for camp cars provided as sleeping quarters exclusively to MOW workers.

(a) The hours of service laws at 49 U.S.C. 21106(b) provide that a railroad that uses camp cars must comply with 49 U.S.C. 21106(a) no later than December 31, 2009. Accordingly, on or after December 31, 2009, a railroad shall not begin construction or reconstruction of a camp car provided by the railroad as sleeping quarters exclusively for MOW workers within or in the immediate vicinity of any area where railroad switching or humping of placarded cars is performed.

(b) This subpart includes definitions of most of the relevant terms (§ 228.101(b) and (c)), the procedures under which a railroad may request a determination by the Federal Railroad Administration that a particular proposed site for the camp car is not within the “immediate vicinity” of railroad switching or humping operations (§§ 228.103 and 228.105), and the basic criteria utilized in evaluating proposed sites. See § 228.5 for definitions of other terms. For purposes of this § 228.102, references to “employees” in §§ 228.103 through 228.107 shall be read to include MOW workers.

[76 FR 67088, Oct. 31, 2011]

§ 228.103 Approval procedure: construction within one-half mile (2,640 feet) (804 meters).

(a) A common carrier that has developed plans for the construction or reconstruction of sleeping quarters subject to this subpart and which is considering a site less than one-half mile (2,640 feet) (804 meters) from any area where switching or humping operations are performed, measured from the nearest rail of the nearest trackage utilized on a regular or intermittent basis for switching or humping operations to the point on the site where the carrier proposes to construct or reconstruct the exterior wall of the structure, or portion of such wall, which is closest to such operations,